(1)

Supreme Court, U.S.
FILED

00-503 SEP 28 2000

No. _____

OFFICE OF THE CLERK

In The

Supreme Court of the United States

ALIMADAD JATOI,

Petitioner,

v.

GUARANTY FEDERAL BANK, F.S.B.,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

Submitted by:
ALIMADAD JATOI,
Pro Se
2315 Oak Knoll Dr.
Colleyville, Texas 76034
(817) 267-0789

49pp

QUESTIONS PRESENTED

Alimadad Jatoi ("Jatoi") filed two title 11, Chapter 11 Bankruptcies. The first bankruptcy case no. 487-42139-MT-11 was to forestall a foreclosure. In this case a lawsuit pending between Guaranty Federal Savings and Loan Association ("GFSLA") and Jatoi in a state court was brought as an adversary proceeding and dismissed resulting in two Federal court judgments. On September 30, 1988, GFSLA was declared insolvent and its stock worthless by Federal Bank Board and taken over by FSLIC and FDIC. The second bankruptcy Case No. 93-60768-MT-11 was to forestall a deficiency judgment which does not exist in the Compromise Settlement agreement, and at the request of Guaranty Federal Bank, FSB, who is not a party to the above federal court judgments. This case was transferred to the Northern District of Texas in Fort Worth Texas, at the request of Guaranty Federal Bank, FSB, over Jatoi's objection (494-40867-MT-11) and then involuntarily converted to Title 11, Chapter 7 (494-40867-MT-7), at the request of Guaranty Federal Bank, FSB.

1. Under vested rights doctrine, can legislature or executive branch of government reverse the decision of the Federal Court and take away rights which have been once vested by judgment? Does it not violate Article III and Amendment V of the United States Constitution?

2. Whether Compromise and Settlement Agreement (Exhibit A) is a Federal Court Judgment and is covered by Article III and Article VI (2) of the United States Constitution.

QUESTIONS PRESENTED – Continued

3. Whether any actions against Jatoi and any decisions and any judgments rendered by the Courts, after the two Federal Court judgments violate, Jatoi's rights within this Compromise and Settlement Agreement and are in violation of Article III and Amendments V, and XIV of the United States Constitution.

4. Whether the Federal Courts have duty and right to honor and enforce all the terms and conditions in the two Federal Court judgments between the parties only, and no one else?

5. Whether order of the bankruptcy court dated June 20, 1988 approving claim of Guaranty Federal Savings and Loan Association following Mutual Release voided a promissory note because it was not consistent with the terms as written in the Compromise and Settlement Agreement and not needed for the purpose for which it was written, namely to file and effectuate a lien against Jatoi's property.

6. Whether Jatoi's request in his pre-trial order, to provide him with a declaratory judgment that the Compromise and Settlement Agreement and Consent Decree were, in fact, Federal Court judgments.

7. Whether Jatoi's request in pre-trial order to refer case to the Justice Department is consistent with Title 18, Chapter 203, Arrest and Commitment § 3057.

8. Whether Guaranty Federal Bank, FSB is a party to the Compromise and Settlement Agreement and to the Consent Decree.

QUESTIONS PRESENTED – Continued

9. Whether the U.S. District Court's summary judgment Case No. 3-97-CV-3095L is consistent with the terms and conditions as embodied in the Compromise and Settlement Agreement and Consent Decree.

10. Whether the Fifth Circuit Court of Appeals had failed to address, examine and decide any of the issues raised by Jatoi in his pre-trial order.

11. Whether various actions of Guaranty Federal Bank, FSB are in violation of Title 18, Chapter 9, § 152(1)(7)(8) and Title 18, Chapter 96, § 1961.

12. Whether the 153rd State District Court is in violation of U.S.C. Title 11, § 524 by rendering judgment 22 days after discharge in Title 11 Chapter 7 Bankruptcy.

13. Whether the actions of the Guaranty Federal Bank, FSB, Bankruptcy Court and Chapter 7 Trustee are in violation of U.S.C. Title 11, § 524.

14. Whether Guaranty Federal Bank, FSB's attorney and attorneys of Jatoi in consort and conspiracy with each other have violated Bankruptcy laws, committed crimes by fraudulent concealment, deceit and false statements during the two bankruptcy proceedings Case No. 487-42139-MT-11 and 494-40867-MT-7 (involuntary conversion at the request of Guaranty Federal Bank, FSB) and needs investigation under U.S.C. Title 18 Chapter 203 § 3057.

15. Whether NUNC PRO TUNC order issued by the U.S. Bankruptcy Judge in Fort Worth, Texas is a

QUESTIONS PRESENTED – Continued

violation of Federal Bankruptcy laws and was this used by Guaranty Federal Bank, FSB and its attorneys in consort and conspiracy with Jatoi's attorneys to commit fraudulent concealment, deceit and violate Bankruptcy laws and deserves an investigation under U.S.C. Title 18 Chapter 203 § 3057.

16. Whether Guaranty Federal Bank, FSB was right in acquiring Jatoi's assets through a transfer and Assignment Agreement from FSLIC and FDIC which specifically excluded "any known claims, demands, cause of action or judgment" violating 31 U.S.C.'s U.S.C. § 3729, the False Claims Act, and not filing a claim in the U.S. Bankruptcy Court in Jatoi's Title 11 Chapter 11 Bankruptcy 487-42139-MT-11, violates Title 18 Chapter 9 § 152.

INTERESTED PARTIES

1. Guaranty Federal Bank, FSB
   c/o Molly Mitchell, Attorney at Law
   814 San Jacinto, Suite 300
   Austin, Texas 78701

2. Ms. Molly Mitchell, Attorney at Law
   814 San Jacinto, Suite 300
   Austin, Texas 78701

3. Solicitor General of United States
   Room 5614
   Department of Justice
   950 Pennsylvania Avenue NW
   Washington DC 20530-0001

4. Governor George W. Bush
   Physical Address: 1100 San Jacinto Blvd., Suite 151B
   Austin, Texas 78701
   Mailing Address: P.O. Box 12428;
   Austin, Texas 78711-2428

5. Attorney General John Cornyn
   Physical Address:
   209 W. 14th Street, Austin, Texas 78701
   Mailing Address:
   P.O. Box 12548, Austin, Texas 78711-2548

6. Cleveland G. Clinton, ex-attorney for
   Guaranty Federal Bank, FSB
   Looper, Reed, Mark, and McGraw
   4100 Thanksgiving Tower
   1601 Elm Street
   Dallas, Texas 75201

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

INTERESTED PARTIES v

TABLE OF AUTHORITIES vii

PETITION FOR A WRIT OF CERTIORARI 1

OPINIONS AND ORDERS BELOW 1

STATEMENT OF THE BASIS OF JURISDICTION OF THE SUPREME COURT 4

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED IN THIS CASE 5

STATEMENT OF THE CASE 6

ARGUMENT OF ISSUES WITH AUTHORITIES 14

CONCLUSION 16

RELIEF REQUESTED 17

TABLE OF AUTHORITIES

Page

CASES

AM Jatoi M.D. v. Hurst-Euless Bedford Hospital Authority et al., 807 Federal Reporter 2nd Series p. 1214 (Jan. 14) 1987 6

In re Schlecht, 36 B.R. 236 (Bkrtcy) (1983) 15, 17

Marbury v. Madison, 1 Cranch 137, 2 L.Ed. 60 (1803) 14

N.L.R.B. v. Superior Forwarding Inc., 762 F.2d 695 (1985) 15

Plaut v. Spendthrift Farm, Inc., 115 S.Ct. 1447 (1995) 14

Rabin v. Fivzar Associates, 801 F. Supp. 1045 (S.D.N.Y. 1992) 14

Resolution Trust Corp. v. Smith, 53 F.3d 72 (5th Cir. 1995) 15, 17

United States v. Overman, 424 F.2d 1142 (9th Cir. 1970) 15

United States v. State of Washington, 459 F. Supp. 1020 (1978) 15

PETITION FOR A WRIT OF CERTIORARI

Jatoi respectfully prays that a writ of certiorari issues to review the judgment of the United States Court of Appeals for the Fifth Circuit of Appeals for the Fifth Circuit entered on May 19, 2000.

OPINIONS AND ORDERS BELOW

1. The fact that the Compromise and Settlement Agreement was a Federal Court Judgment was fraudulently concealed from Jatoi by Guaranty Federal Bank FSB in consort and conspiracy with Jatoi's attorneys with conflict of interest and by attorneys for Guaranty Federal Savings and Loan Association. Jatoi had not received any documents and was deprived by Bankruptcy Nunc Pro Tunc Order of the Knowledge that the Compromise and Settlement Agreement is a Federal Court Judgment.

2. The fact that "Promissory Note" in favor of Guaranty Federal Savings and Loan Association was not only verbally voided (as it was inconsistent with the terms and conditions and purpose as defined and ordered in Compromise and Settlement Agreement) it was voided by Mutual Release in writing. This further was replaced by order of the Bankruptcy Court (a Consent Decree) dated June 20, 1988. Therefore, the Note, voided by Mutual Release merged into the Judgment by a Consent Decree on June 20, 1988 and thereby had no independent legal value.

This June 20, 1988 order was fraudulently concealed by Guaranty Federal Bank FSB in consort and conspiracy with Jatoi's attorneys and attorneys for Guaranty Federal

Savings and Loan Association and the Nunc Pro Tunc order issued by the U.S. Bankruptcy Court.

3. The fact that Guaranty Federal Bank FSB is not a bonafide purchaser of Jatoi's any asset (a voided Note) from FSLIC, Receiver for Guaranty Federal Savings and Loan Association (a failed Institution) because Guaranty Federal Bank FSB and FSLIC did not file a claim in U.S. Bankruptcy Court in Jatoi's Title 11 Chapter 11 bankruptcy Case No. 487-42139-MT-11 and Guaranty Federal Bank FSB fraudulently collected monies from Jatoi during the pendency of his Title 11 Chapter 11 Bankruptcy in violation of U.S.C. Title 18 Chapter 9 § 152(9) and Rule 5005(a)(1).

FIFTH CIRCUIT COURT OF APPEALS

4. a. The Fifth Circuit Court of Appeals filed on May 19, 2000 asserted that Jatoi's petition was frivolous and granted sanctions against Jatoi to Guaranty Federal Bank FSB.

   After Petition for Rehearing, the Fifth Circuit (filed on June 30, 2000) withdrew their assertion that Jatoi's petition was frivolous and did not grant sanctions against Jatoi to Guaranty Federal Bank FSB

   b. The Fifth Circuit Court of Appeals had a right to refer this case and certify under Supreme Court Rule 19, in the interest of Justice.

   c. Jatoi had filed a motion with the Fifth Circuit Court of Appeals, to file exhibit (Nunc Pro Tunc Order – Judicial misconduct) with reply brief, which was denied, and failed to refer to the Chief Judge of the Fifth Circuit.

   d. The Fifth Circuit had a right to refer to the Justice Department Title 18 Chapter 203 § 3057.

SUMMARY JUDGMENT OF U.S. DISTRICT COURT

5. a. Failed to address any of the complaints and issues after June 15, 1998 including "Plaintiff's pre-trial Order" dated Oct. 2, 1998.

b. Relied exclusively on motion for Summary Judgment filed June 1, 1998 by Guaranty Federal Bank FSB and its attorney which contains false and misleading statements:

(i) That Compromise and Settlement Agreement was a "Restruction of Loan."

This is false. It is a Federal Court Judgment.

(ii) That the Note was verbally voided in her response dated Dec. 31, 1997.

This note was not only verbally voided, but by written Mutual Release and replaced by Order of U.S. Bankruptcy Judge dated June 20, 1988.

(iii) That Jatoi's discharge (494-40867-MT-7) – involuntary Bankruptcy, occured after the 153rd Texas State Court Judgment.

Discharge occured on Jan. 19, 1995 153rd Texas State Court Judgment on February 10, 1995.

(iv) Refers to 153rd State Court Judgment as "Final Judgment" the word "Final" is deceiving. This Judgment was written by Guaranty Federal Bank FSB's attorney, Mr. Cleveland Clinton.

(a) It violates the terms of the two unappealed Federal Court Judgments which are Res Judicata.

(b) Guaranty Federal Bank FSB is not a party to these Federal Court Judgments.

(c) The 153rd State Court Judgment was issued 22 days after discharge in Involuntary Title 11 Chapter 7 Bankruptcy (494-40867-MT-7).

Jatoi asserts that, Jatoi was made to believe and continued to believe that Guaranty Federal Bank FSB was in fact Guaranty Federal Savings and Loan Association Exhibit – Jatoi's motion to the court in 1991.

STATEMENT OF THE BASIS OF JURISDICTION OF THE SUPREME COURT

The statutory provision for this Court's jurisdiction is 28 U.S.C. § 1254(1), § 1251b(2), § 1257(a), and Article III of the United States Constitution. The United States Court of Appeals for the Fifth Circuit entered its judgment on May 19, 2000 and on the Petition for Rehearing on June 30, 2000. This petition is timely filed ninety (90) days from June 30, 2000.

Jurisdiction in the United States Court of Appeals for the Fifth Circuit was based on 28 U.S.C. § 1291. Jurisdiction in the United States District Court was based on 28 U.S.C. § 158.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED IN THIS CASE

1. Article III, Section 2 of the Constitution of the United States
2. Article VI of the Constitution of the United States
3. Amendment V of the Constitution of the United States
4. Amendment XIV of the Constitution of the United States
5. U.S.C. Title 18, Chapter 203 § 3057.
6. U.S.C. Title 18, Chapter 96 § 1961.
7. U.S.C. Title 18, Chapter 9 § 152(1)(7)(8)(9)
8. U.S.C. Title 28, § 1334(C)(1)
9. 31 U.S.C. § 3802(2)(A)(i)(ii)(iiXI)(II)
10. 31 U.S.C.S. § 3729
11. U.S.C. Title 11, § 303b(1)
12. U.S.C. Title 11, § 524(a)(1)(2)(3)
13. U.S.C. Title 42, § 1983
14. U.S.C. Title 42, § 1985
15. 28 U.S.C. § 1254(1)
16. 28 U.S.C. § 1251b(2)
17. 28 U.S.C. § 1257(a)
18. 28 U.S.C. § 1291
19. 28 U.S.C. § 158
20. U.S.C. Title 11 § 343

STATEMENT OF THE CASE

Alimadad Jatoi M.D., F.R.C.S. (Eng.) is board certified in England. He is a naturalized citizen. Due to his foreign origin and training, he had undergone discrimination by the physicians and the Hospital Authorities The Fifth Circuit Court of Appeals rendered a favorable judgment in case No. 85-1745 *A.M. Jatoi M.D. v. Hurst-Euless-Bedford Hospital Authority et al.*, 807 Federal Reporter 2nd Series p. 1214 (Jan. 14, 1987). The building in question was going to be a MEDICAL CENTER. This fact has been admitted by the attorney for Guaranty Federal Bank FSB in her response dated January 2, 1998 in 3-97-CV-3095-P.

A lawsuit had previously existed between Guaranty Federal Savings and Loan Association ("GFSLA") and Jatoi. GFSLA filed a lawsuit in the 141st State District Court, Case No. 141-105085-87. Jatoi countersued for lack of accounting of his escrow funds.

On August 4, 1987, GFSLA attempted to foreclose on Jatoi's property. Jatoi filed Title 11, Chapter 11 Bankruptcy (487-42139-MT-11) in the U.S. Bankruptcy Court in Fort Worth, Texas to forestall the foreclosure by GFSLA. The Case No. 141-105085-87 was removed to this U.S. Bankruptcy Court as an Adversary Proceeding No. 487-4383 as a contested matter. After pre-trial investigations the parties agreed to settle their Adversary Proceeding No. 487-4383. A Compromise and Settlement Agreement was reached between GFSLA and Jatoi on April 25, 1988. App. 20-23. It is free-standing and no court, Federal or State, and no trustee in any case can change or violate its terms and conditions without *written consent of Jatoi*. App. 22. On May 17, 1988 the Compromise

and Settlement Agreement was approved by the order of the U.S. Bankruptcy Court. The Adversary Proceeding No. 487-4383 was dismissed on June 15, 1988, after the approval of the Compromise and Settlement Agreement, on May 17, 1988.

Per paragraph 8(c) of the Compromise and Settlement Agreement, the Promissory note and the Deed of Trust was required to file a lien on Jatoi's real estate properties. App. 22. The note in favor of GFSLA was required to be consistent with the terms of the Compromise and Settlement Agreement. Subsequently, it was found that the note which he had signed was not consistent with the terms within the Compromise and Settlement Agreement. App. 20. Therefore, it was verbally voided. This fact, that the note was verbally voided has been admitted by the attorney for Guaranty Federal Bank FSB in her response dated January 2, 1998 in 3-97-cv-3095-P. It was also determined that the note and deed of trust were not required in order to file a lien per Texas law. App. 21. A mutual Release was signed on June 14, 1988, by which the note was voided. Subsequently, on June 20, 1988 the U.S Bankruptcy Court signed an order with consent of the parties, namely GFSLA and Jatoi, approving the claim of GFSLA which specified that Jatoi will discharge his loan obligations with GFSLA as written and ordered within the Compromise and Settlement Agreement, under secured claim. See Lodging filed with this Petition.

In September 1988, a dispute arose between Jatoi's tenant, Bell Helicopter (Textron) and Jatoi, regarding expense stop. Arbitration was ordered by U.S. Bankruptcy Court. This arbitration took place in November-

December 1988, three sessions were held each lasting three to four hours. Bell Helicopter was represented by Trammel Crow Realty Corporation, Inc., manager. Jatoi was dissatisfied with the conduct of arbitration by his attorney, Mr. William C. Meier. Later, Mr. Meier admitted a conflict of interest but refused to release any papers to Jatoi involving his Adversary Proceeding No. 487-4383, and the lawsuit of the 141st District Court. He has not released these papers as of to date. In late 1998, Jatoi discovered that Trammell Crowe Ventures Inc. were one of the owners of Guaranty Federal Bank FSB.

At this point, Jatoi wants to bring to the attention of the Honorable Court, that he was not made aware GFSLA was declared insolvent and its stock declared worthless by the Federal Bank Board and FSLIC was appointed as its receiver. FSLIC did not file a claim against him in the U.S. Bankruptcy Court in Title 11, Chapter 11, Case No. 487-42139-MT-11. Jatoi was not made aware that Compromise and Settlement Agreement, pursuant to the Adversary Proceeding was in fact a Federal Court Judgment. Jatoi was not aware that the order of the Bankruptcy Court approving the claim of GFSLA, dated June 20, 1988, existed and was a Federal Court Judgment. The only knowledge that he remembered was that the promissory note was voided. Jatoi continued to believe that the Compromise and Settlement Agreement was a restructure of the loan to GFSLA.

On December 19, 1988 U.S. Bankruptcy Court Judge in Fort Worth, Texas refused to approve Jatoi's plan for reorganization. Jatoi was advised by U.S. Trustee in Bankruptcy, Ms. Tutrow, to dismiss the Title 11, Chapter 11 Bankruptcy. On December 23, 1989 Jatoi moved and filed

an application to dismiss the Title 11, Chapter 11 Bankruptcy. On January 3, 1990 (after the Christmas and New Year's holidays) the Bankruptcy Judge signed the order dismissing Jatoi's Title 11, Chapter 11 Bankruptcy.

Mr. William C. Meier had continued to refuse to release any books, papers, and/or records involved in Jatoi's Adversary Proceeding and Bankruptcy Court orders related thereto.

On April 24, 1990 U.S. Marshall appeared at Jatoi's office and served him with a Writ to satisfy a NUNC PRO TUNC order dated January 10, 1990, which had been issued seven days after the dismissal of Title 11, Chapter 11 Bankruptcy Case No. 487-42139-MT-11. This order authorized Mr. Meier to not release the papers, books, records and other documents related to the Adversary Proceeding No. 487-4383. Jatoi need not remind this Honorable Court that this is a gross misconduct on the part of the U.S. Bankruptcy Court in Fort Worth, Texas and Jatoi remained unaware of the fact that Compromise and Settlement Agreement was a Federal Court Judgment, as was the order of the Bankruptcy Court approving the claim of GFSLA dated June 20, 1988.

The first time that Jatoi became aware of the fact that Compromise and Settlement Agreement is a Federal Court Judgment was in July 1998 and that the promissory note in fact had not only been verbally voided but was voided in writing by a Mutual Release and replaced by an order of the Bankruptcy Court dated June 20, 1988, approving the claim of GFSLA and was a Federal Court Judgment. All Jatoi's pleadings in the U.S. District Court in Dallas, Texas began in December 18, 1997, and were

amended as the time past and Jatoi began to discover these documents and other facts on his own by searching the Federal and State archives in the courthouses in Fort Worth, Texas.

On September 30, 1988, FSLIC, unknown to Jatoi, as receiver of GFSLA and later the FDIC on September 28, 1989 (after passage of the FIRREA Act) transferred some (but not all) unspecified notes involving real estate properties in a bulk sale to a newly created and chartered Savings Bank (through Transfer and Assignment Agreement) now called Guaranty Federal Bank, FSB. Jatoi and the U.S. Trustees were not notified of these transfers nor was there a claim filed in the U.S. Bankruptcy Court Title 11, Chapter 11 (487-42139-MT-11). Guaranty Federal Bank, FSB used the same offices, the same attorneys and used the same logo and name as used by GFSLA, namely "Guaranty" and "Guaranty Federal". Jatoi continued to believe that Guaranty Federal Bank, FSB was GFSLA and continued to make payments of $53,000 each month during the pendency of the Title 11, Chapter 11 Bankruptcy No. 487-42139-MT-11 and they did not file a claim. See Lodging filed with this Petition. Even after the dismissal of the bankruptcy Guaranty Federal Bank, FSB collected the $53,000 each month until April 1, 1991.

On March 1, 1991 the loan came due per Compromise and Settlement Agreement. Jatoi remembered that the note was voided. He had been led to believe that Compromise and Settlement Agreement was a Restructure of the Loan. He had believed and was led to believe that Guaranty Federal Bank, FSB was the same Guaranty as GFSLA. Guaranty Federal Bank, FSB initially had retained the same name "Guaranty Federal Savings and

Loan Association". They claimed they changed their name to accommodate other banks with whom they had merged. Guaranty Federal Bank, FSB filed a lawsuit against Jatoi, his management company, and Bell Helicopter in the 153rd Texas District Court in Fort Worth, Texas to collect rents from Bell Helicopter. Guaranty Federal Bank, FSB foreclosed on his properties including medical equipment and other private properties. Guaranty Federal Bank, FSB filed for deficiency judgment against Jatoi in the amount of four million dollars in 153rd Texas District Court in Fort Worth, Texas, after they had purchased the building and adjacent property worth thirteen million dollars for 1.75 million dollars. Subsequently, on July 20, 1994, Guaranty Federal Bank, FSB involuntarily converted Jatoi from Title 11, Chapter 11 Bankruptcy to Title 11, Chapter 7 Bankruptcy, violating Title 11 § 303(b)(1). Jatoi was discharged in Title 11, Chapter 7 Bankruptcy ON 19th JANUARY 1995. The Chapter 7 Trustee held the creditors' meeting after the discharge in violation of Title 11 § 343 on February 6, 1995. Guaranty Federal Bank, FSB did not attend the creditors' meeting. In fact, no creditors appeared. At the creditors' meeting, Jatoi was allowed all exemptions and Chapter 7 Trustee abandoned all assets to Jatoi. The Trustee filed an application with the Bankruptcy Judge to close the bankruptcy, Title 11, Chapter 7.

On February 10, 1995, Guaranty Federal Bank, FSB's attorney, Mr. Cleveland Clinton, obtained an invalid 153 Texas District Court Judgment dated February 10, 1995 from 153rd Texas District Court Judge and this Judgment

in the amount as stated below[1] was a Personal Deficiency Judgment against Jatoi. This has been deceitfully captioned as final judgment and obtained after the Jatoi's Chapter 7 discharge on January 19, 1995. 494-40867-MT-7. This is not only in violation of the Discharge Order Title 11 § 524(a)(1)(2)(3), but also in violation of the Compromise and Settlement Agreement, a Federal Court Judgment.

This so-called "final judgment" after Discharge Order Title 11, Chapter 7 Bankruptcy has been used by Guaranty Federal Bank, FSB attorneys, Ms. Molly Mitchell and Mr. Cleveland Clinton, to claim Res Judicata. Ms. Molly Mitchell filed an amended claim after discharge in Title 11 Chapter 7 Bankruptcy on Feb. 25, 1995 with U.S. Bankruptcy Court in the amount of $6,640,215.10 in violation of 31 U.S.C. 3802(2)A(i).

All actions of the Bankruptcy Court, Chapter 7 Trustee, and the U.S. District Court "summary judgment" are based on the false representations made by Guaranty Federal Bank, FSB attorney, Ms. Molly Mitchell, that this judgment was rendered in FEBRUARY, before discharge

---

[1] IT IS ORDERED, ADJUDGED AND DECREED that:

1. Guaranty shall recover from Jatoi the sum of Six Million Five Hundred Fifty One Thousand Five Hundred Seventy Five and 28/100 Dollars ($6,551,575.28), plus pre-judgment interest from November 15, 1994, until January 19, 1995, in the amount of $130,526.22, and post-judgment interest at the rate of 18% per annum until paid in full;

2. Guaranty shall recover from Jatoi reasonable attorneys' fees in the sum of Six Hundred Fifty Five Thousand One Hundred Fifty Seven and 52/100 Dollars ($655,157.52), together with all costs of court.

in Title 11, Chapter 7 Bankruptcy, and it is false. This statement is absolutely false. Furthermore, throughout these proceedings Compromise and Settlement Agreement has been described as "Restructure of a Loan", written in pursuant to a promissory note in favor of GFSLA. This statement is also false. Further, the Assignment and Transfer Agreement, by FSLIC, does not transfer the note of Jatoi to Guaranty Federal Bank, FSB. In fact, the voided note was not signed over to Guaranty Federal Bank, FSB on September 30, 1988 by FSLIC, not signed over on September 28, 1988 by FDIC, not signed over at the time Guaranty Federal Bank, FSB filed the lawsuit against Jatoi, his management and Bell Helicopter to collect rents. On April 2, 1991, the note was not signed over at the time of the foreclosure of Jatoi's properties, and was not signed over at the time Guaranty Federal Bank, FSB filed for Deficiency Judgment against Jatoi in June, 1991. Jatoi continued to act and respond under the impression that Guaranty Federal Bank, FSB in fact, was GFSLA and that Compromise and Settlement Agreement was a Restructure of the Loan. The voided promissory note was not transferred at the time Guaranty Federal Bank, FSB moved to convert Jatoi to involuntary Title 11, Chapter 7 Bankruptcy over his objections. In fact, this conversion is in violation of Title 11 § 303(b)(1). In fact, this promissory note was not transferred on September 24, 1994. In fact, under bizarre circumstances two different notes appeared in the 153rd Texas State District Court, and was signed over after Jatoi's discharge in an involuntary Title 11 Chapter 7 Bankruptcy at the request of Guaranty Federal Bank, FSB by James Weaver of FDIC, on December 20, 1994.

This Honorable Court should note the entire proceedings in all the courts are based on the purchase of this note by Guaranty Federal Bank, FSB from FSLIC and FDIC, per Assignment and Transfer Agreement which specifically excludes any claims and notes as a result of judgments involving GFSLA at the time it was declared insolvent in September 30, 1988.

COMPROMISE AND SETTLEMENT AGREEMENT is a Federal Court Judgment, and GUARANTY FEDERAL BANK, FSB is not a party to it. Nor is Guaranty Federal Bank a party in the order of the Bankruptcy Court dated June 20, 1988 approving claim of GFSLA, a consent degree and a Federal Court Judgment.

ARGUMENT OF ISSUES WITH AUTHORITIES

On September 30, 1988, FSLIC as receiver of GFSLA and later the FDIC on September 28, 1989 (after the passage of FIRREA Act) transferred some but not all unspecified notes of real estate properties in a Bulk Sale to a newly created and chartered savings bank, now calling itself Guaranty Federal Bank, FSB. The Constitution forbids the legislature to interfere with Courts' Final Judgments. *Marbury v. Madison*, 1 Cranch 137, 177, 2 L.Ed. 60 (1803). Under the Vested Rights Doctrine, consistent with Article III and Fifth Amendment of the United States Constitution legislature may not direct reversal of decision of the Federal Court and take away rights that have been vested by judgment. *Rabin v. Fivzar Associates*, 801 F. Supp. 1045 (S.D.N.Y. 1992). FIRREA could not apply to Federal Court Judgments that were already in place, *Plaut*

v. Spendthrift Farm, Inc., 115 S.Ct. 1447 (1995). Jatoi and the U.S. Trustees were not notified of these transfers, nor was there a claim filed in the U.S. Bankruptcy Court Chapter 11 (487-42139-MT-11) in the Northern District of Fort Worth by the FSLIC and the FDIC. This is in violation of U.S. Code Title 18 Chapter 9, 152(1)(7)(8). A Bankruptcy Court has discretion and authority to enjoin Federal Regulatory Proceedings when the debtor's estate is threatened. *N.L.R.B. v. Superior Forwarding, Inc.*, 762 F.2d 695 (1985).

The Transfer and Assignment Agreement by FSLIC/FDIC specifically excludes claims from judgments in para. XI.

The note was voided by Mutual Release and by June 20, 1988 order of the Bankruptcy Court. "When the Judgment is rendered on a note, the note becomes entirely merged in the judgment and no longer binds the parties to it. The note itself has no longer any legal effect, all of its remaining liability is transferred to the judgment." *In re Schlecht*, 36 B.R. 236 (Bkrtcy) (1983).

A Federal Court has the authority and the duty to protect and effectuate its prior Judgments. *United States v. State of Washington*, 459 F. Supp. 1020 (1978) and a continuing jurisdiction to enforce its Judgments. *Resolution Trust Corp. v. Smith*, 53 F.3d 72, 76 (5th Cir. 1995), and a Judgment is not subject to limitations and is enforceable at any time. *United States v. Overman*, 424 F.2d 1142, 1147 (9th Cir. 1970).

Guaranty Federal Bank, FSB has caused a grave injury to Jatoi by arbitrarily abusing Governmental power, by misleading statements and false claims in

courts and depriving Jatoi of his properties in violation of 42 U.S.C.A. § 1985 and 42 U.S.C.A. § 1983.

CONCLUSION

1. Compromise and Settlement agreement between Guaranty Federal Savings and Loan Association and petitioner Jatoi is a Federal Court Judgment and is governed by Article III and Article VI of the Constitution of the United States.

2. Order of the Bankruptcy Court dated June 20, 1988, approving the claim of Guaranty Federal Savings and Loan Association is a "Consent Decree" a Federal Court Judgment and is governed by Article III and Article VI of the Constitution of the United States.

3. The "Memorandum of Transfer and Assignment" by FSLIC and FDIC does not transfer Jatoi's any asset or claim of GFSLA to Guaranty Federal Bank, FSB ("excluded from the transfer and conveyance the following assets . . . (xi) any known or unknown claim, demand, cause of action or judgment . . . ") or to anyone else, nor can it do so as it violates the two Federal Court Judgments. Further, it is in violation of Texas Law Uniform Commercial Code as it existed in 1988 and 1989. See Lodging filed with this Petition.

4. Guaranty Federal Bank, FSB is not a party to the two Federal Court Judgments.

5. Fraud, fraudulent concealment, false statements, lies, and misleading statement in the Courts have been used by Guaranty Federal Bank, FSB and their attorneys to obtain various decisions and judgments in their favor to deny Jatoi his rights as embodied in Article III and Article VI and Amendments V and XIV

of the United States Constitution. These court decisions are from United States Bankruptcy Court, United States District Court, Texas State District Court, including the Supreme Court of Texas.

6. Federal Courts not only have jurisdiction but duty and right to enforce the rights of the parties only, as ordered and stipulated within these Federal Court Judgments. *Resolution Trust Corp. v. Smith*, 53 F.3d 72, 76 (5th Cir. 1995).

7. Guaranty Federal Savings and Loan Association ("GFSLA") ceased to exist around September 30, 1988 and left behind no successors. FSLIC and FDIC were appointed as its receivers.

8. A promissory note, be it voided or not, cannot be transferred by itself as it has no independent legal standing. It has merged with the two Federal Court Judgments (Final and Unappealed). *In re Schlecht*, 36 B.R. 236 (Bkrtcy) (1983).

9. The nunc pro tunc order of the U.S. Bankruptcy Court after dismissal of Jatoi's Title 11 Chapter 11 Bankruptcy (487-42139-MT-11) awarding fees to William C. Meier and Associates PC (Jatoi's contract and approval by the Bankruptcy Court was with William C. Meier, as an individual practitioner) on the day William C. Meier filed his own Title 11 Chapter 7 Bankruptcy (489-44308-7) needs an investigation under Title 18 Chapter 203 § 3057.

RELIEF REQUESTED

Jatoi prays that this Honorable Court:

1. Declare that the Compromise and Settlement Agreement, pursuant to an Adversary Proceeding Title 11, Chapter 11 Bankruptcy, after it was approved in the

U.S. Bankruptcy Court is a Federal Court Judgment. The order of the Bankruptcy Court dated June 20, 1988, approving the claim of GFSLA is also a Federal Court Judgment.

2. Declare that Guaranty Federal Bank, FSB is not a party to these two Federal Court judgments (between the parties namely Guaranty Federal Savings and Loan Association and Jatoi) which were Final and Unappealed.

3. Declare that the "Memorandum of Transfer and Assignment" cannot transfer Jatoi's any asset or any claim of GFSLA due to the two Final Unappealed Federal Court Judgments.

4. Refer the matter to a Government agency under Title 18, Chapter 203 § 3057 and following their report, Jatoi prays that this Honorable Court refer to a panel of three (3) impartial judges in the Federal Court System for immediate trial and disposition of this case.

5. Any other relief which is consistent with Jatoi's constitutional, common law, civil and other legal rights.

6. This Honorable Court may recommend to the Congress to pass legislation to reform the legal and justice system (particularly in Texas) in the interest of people as a whole, so that this sort of injustice does not happen to someone else.

Respectfully Submitted,
ALIMADAD JATOI
Pro Se
2315 Oak Knoll Dr.
Colleyville, Texas 76034
(817) 267-0789

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-10729
Summary Calendar

ALIMADAD JATOI,

Plaintiff-Appellant,

versus

GUARANTY FEDERAL BANK, F.S.B.,

Defendant-Appellee.

Appeals from the United States District Court
for the Northern District of Texas
USDC No. 3:97-CV-3095-L

(Filed May 19, 2000)

Before HIGGINBOTHAM, DeMOSS, and STEWART, Circuit Judges.

PER CURIAM:*

Alimadad Jatoi appeals the district court's dismissal of his complaint, which sought a declaratory judgment that he owes Guaranty Federal Bank ("Guaranty") nothing on a promissory note. Jatoi's motion to amend the record on appeal with his pretrial order and his motion

---

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

for leave to file a supplemental reply brief are GRANTED. His motions to supplement the record with documents from other proceedings, to file exhibits with his reply brief, and to file exhibits with the supplemental reply brief are DENIED. Jatoi's motion to file an untimely reply to Guaranty's repose to a motion for sanctions is GRANTED.

When we are in doubt about the district court's exercise of subject-matter jurisdiction, we are obliged to raise the issue sua sponte. *In re Bass*, 171 F.3d 1016, 1021 (5th Cir. 1999). The declaratory judgment statute, 28 U.S.C. § 2201, authorizes relief only when another basis for jurisdiction is present. *TTEA v. Ysleta del Sur Pueblo*, 181 F.3d 676, 681 (5th Cir. 1999). None exists. The parties are not diverse, *see* 28 U.S.C. §§ 1332, 1348, and Jatoi's complaint suggested he was seeking to invoke federal-question jurisdiction under 28 U.S.C. § 1331. However, federal-question jurisdiction is not triggered merely because one of the parties is a federally-chartered bank. *Southern Elec. Steel Co. v. First Nat'l Bank of Birmingham*, 515 F.2d 1216, 1217 (5th Cir. 1975); *see also* 28 U.S.C. § 1349. Nor does Jatoi's complaint credibly suggest that Guaranty acted in concert with the federal government so as to make the bank liable for a civil rights violation as a federal actor. *See Morast v. Lance*, 807 F.2d 926, 931 (11th Cir. 1987); *see also Bass v. Parkwood Hosp.*, 180 F.3d 234, 241-42 (5th Cir. 1999) (42 U.S.C. § 1983 case). Finally, we have considered and rejected the possibility that 28 U.S.C. § 1334 could have authorized Jatoi's complaint. Accordingly, we RENDER judgment DISMISSING Jatoi's complaint for lack of subject-matter jurisdiction. *See*

J.A.R., Inc. v. M/V LADY LUCILLE, 963 F.2d 96, 100 (5th Cir. 1992).

Both Jatoi and Guaranty have filed motions for sanctions. Fed. R. App. P. 38 authorizes us to grant a motion for sanctions if we determine that an appeal is frivolous. An appeal is frivolous if it "involves legal points not arguable on their merits." *Travelers Ins. Co. v. Liljeberg Enters., Inc.*, 38 F.3d 1404, 1413 (5th Cir. 1994). In light of the disposition of this appeal, we DENY Jatoi's motion. However, we agree with Guaranty that Jatoi's appeal is frivolous; accordingly, we GRANT guaranty's motion for sanctions to the extent it seeks to recover its costs for defending this appeal. We DIRECT Guaranty to file a bill of costs together with an affidavit setting forth expenses and attorney's fees reasonably incurred by it in connection with this appeal. *See* Fed. R. App. P. 39; 5th Cir. R. 39, 47.8.1.

MOTION TO AMEND RECORD ON APPEAL GRANTED; MOTION FOR LEAVE TO FILE SUPPLEMENTAL REPLY BRIEF GRANTED; MOTION TO SUPPLEMENT DENIED; MOTION TO FILE EXHIBIT WITH REPLY BRIEF DENIED; MOTION TO FILE EXHIBIT WITH SUPPLEMENTAL REPLY BRIEF DENIED; MOTION FOR LEAVE TO FILE UNTIMELY REPLY GRANTED; JUDGMENT RENDERED AND APPEAL DISMISSED FOR WANT OF JURISDICTION; SANCTIONS IMPOSED; APPELLEE DIRECTED TO FILE BILL OF COSTS AND AFFIDAVIT OF REASONABLE EXPENSES AND ATTORNEY'S FEES.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-10729

ALIMADAD JATOI

Plaintiff - Appellant

v.

GUARANTY FEDERAL BANK FSB

Defendant - Appellee

Appeals from the United States District Court
for the Northern District of Texas, Dallas

(Filed Jun. 1, 2000)

ORDER:

IT IS ORDERED that appellant's request to extend time to file his petition for rehearing/petition for rehearing en banc is GRANTED.

/s/ PEH
PATRICK E. HIGGINBOTHAM
UNITED STATES CIRCUIT
JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ALIMADAD JATOI,	§	
	§	
Plaintiff,	§	
	§	Civil Action No.
V.	§	3:97-CV-3095 L
	§	
GUARANTY FEDERAL BANK, F.S.B.,	§	
	§	
	§	
Defendant.	§	

MEMORANDUM OPINION AND ORDER

(Filed March 31, 1999)

Before the court are Guaranty Federal Bank, F.S.B.'s ("Guaranty Federal") Motion for Summary Judgment, Filed June 1, 1998, and Alimadad Jatoi's ("Jatoi") Motion for Partial Summary Judgment, filed June 15, 1998. Upon consideration of the motions, responses, replies, the applicable law, and the record evidence, the court **grants** Guaranty Federal's motion for summary judgment, and **denies** Jatoi's motion for partial summary judgment.

I. Factual and Procedural Background

In 1984 Jatoi executed a promissory note payable to Guaranty Federal Savings and Loan Association ("GFSLA"). Jatoi used the loan proceeds received to construct a commercial building he intended to use as a medical clinic. In August 1987, Jatoi filed his first bankruptcy proceeding. Case No. 487-42139-T11 in the United States Bankruptcy Court for the Northern District of

Texas, Fort Worth Division (the "First Bankruptcy"). GFSLA was the principal creditor in the First Bankruptcy. GFLSA made a claim in the first bankruptcy with regard to the promissory note, and Jatoi objected. Jatoi's objection was subsequently resolved through a settlement agreement he entered into with GFLSA. As part of the compromise, Jatoi executed a modified promissory note. Jatoi claims he orally rescinded this note and that GFLSA was to provide him with another revision but did not. After the debt to GFLSA was restructured, the bankruptcy was dismissed.

On September 30, 1988, GFLSA was declared insolvent. The FSLIC was appointed receiver, and on that same day, the FSLIC transferred Jatoi's note to Guaranty Federal Bank, F.S.B., a newly-formed entity. Jatoi denies that the note was ever transferred but does not have any evidence to support this allegation. Eventually Jatoi defaulted on the note and Guaranty Federal foreclosed on it and purchased the property (a commercial building) at the foreclosure sale in 1991. Guaranty Federal also sued Jatoi to recover the note balance (the "State Court Litigation"). Jatoi counterclaimed for wrongful disclosure and raised other defenses. The State Court Litigation proceeded, but in August 1993 Jatoi declared bankruptcy again (the "Second Bankruptcy").

Guaranty Federal obtained relief from the automatic stay, and the state court proceeded to judgment in the State Court Litigation. On February 10, 1995, the state court entered final judgment against Jatoi, awarding Guaranty Federal $6,551,575.28 plus attorneys' fees. All of Jatoi's defenses and counterclaims were denied. Jatoi

appealed the judgment to the Fort Worth Court of Appeals under Case No. 2-95-126-CV.

In February 1995, the Second Bankruptcy was converted from a Chapter 11 to a Chapter 7 proceeding. On February 25, 1995, the bankruptcy court entered an agreed order wherein Jatoi stipulated that all of his counterclaims against Guaranty Federal were the property of the bankruptcy estate. Thereafter the bankruptcy trustee entered into an agreement with Guaranty Federal wherein the counterclaims were sold to Guaranty Federal for $5,000.00. The bankruptcy court approved this sale, and on August 1, 1995, Jatoi's counterclaims were assigned to Guaranty Federal by the bankruptcy trustee. Guaranty Federal then moved to dismiss the pending appeal, and the appeal was dismissed on September 21, 1995. Jatoi moved for rehearing and eventually filed an application for writ of error with the Texas Supreme Court, both of which were denied.

In the instant case, Jatoi contends that Guaranty Federal is not a bona fide purchaser of the note or any other documentation related to his building, that the actions taken by Guaranty Federal based on its purchase of the promissory note are void, and that the court should void all judgments against him previously entered by the federal and state courts, and also void all claims by Guaranty Federal related to the transaction.

II. Summary Judgment Standard

Summary judgment shall be rendered when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,

show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-25 (1986); *Ragas v. Tennessee Gas Pipeline Company*, 136 F.3d 455, 458 (5th Cir. 1998). A dispute regarding a material fact is "genuine" if the evidence is such that a reasonable jury could return a verdict in favor of the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). When ruling on a motion for summary judgment, the court is required to view all inferences drawn from the factual record in the light most favorable to the non-moving party. *Matsushita Elec. Indus., Co. v. Zenith Radio*, 475 U.S. 574, 587 (1986); *Ragas*, 136 F.3d at 458.

Once the moving party has made an initial showing that there is no evidence to support the nonmoving party's case, the party opposing the motion must come forward with competent summary judgment evidence of the existence of a genuine fact issue. *Matsushita*, 475 U.S. at 586. Mere conclusory allegations are not competent summary judgment evidence, and thus are insufficient to defeat a motion for summary judgment. *Eason v. Thaler*, 73 F.3d 1322, 1325 (5th Cir. 1996). The party opposing summary judgment is required to identify specific evidence in the record and to articulate the precise manner in which that evidence supports his claim. *Ragas*, 136 F.3d at 458. Rule 56 does not impose a duty on the court to "sift through the record in search of evidence" to support Plaintiff's opposition to Defendant's motion. *Id.*, *Skotak v. Tenneco Resins, Inc.*, 953 F.2d 909, 915-16 & n.7 (5th Cir.), *cert. denied*, 506 U.S. 832 (1992). "Only disputes over facts

that might affect the outcome of the suit under the governing laws will properly preclude the entry of summary judgment." *Anderson*, 477 U.S. at 248. Disputed fact issues which are "irrelevant and unnecessary" will not be considered by a court in ruling on a summary judgment motion. *Id.* If the nonmoving party fails to make a showing sufficient to establish the existence of an element essential to its case and on which it will bear the burden of proof at trial, summary judgment must be granted. *Celotex*, 477 U.S. at 322-23.

III. Guaranty Federal's Motion for Summary Judgment

Guaranty Federal has moved for summary judgment on several grounds, including limitations, res judicata, the compulsory counterclaim rule, and lack of standing. Guaranty Federal further seeks $3,500 in sanctions against Jatoi for the fees and costs incurred in preparing its motion for summary judgment.

A. Limitations

Jatoi filed this case on December 18, 1997. Guaranty Federal argues that Jatoi's case is barred by limitations because it arises out of the note executed in 1988 and the alleged wrongful foreclosure that took place in 1991, six and one-half years before Jatoi filed this suit. The maximum limitations period on a wrongful foreclosure claim is four years. *Gonzales v. Lockwood Lumber Co.*, 668 S.W.2d 813, 814 (Tex. App. – Houston [14th Dist.] 1984, writ ref'd n.r.e.). Jatoi's other causes of action are also premised on the alleged invalidity of the note, the alleged invalidity of

the transfer of the note from GFSLA to Guaranty Federal, and the alleged wrongful foreclosure. All of these events took place between 1988 and 1991, and therefore would be outside Texas' two-year and four-year statutes of limitation. Tex. Civ. Prac. & Rem. Code §§ 16.003, 16.004, and 16.051.

Jatoi's response to Guaranty Federal's limitations argument is that Guaranty Federal has engaged in a continuing pattern of conduct against him, and that the February 1995 judgment and Guaranty Federal's subsequent efforts to collect on the judgment somehow keep his earlier causes of action from being barred by limitations. Jatoi has cited no case law or statutory authority in support of this argument. The court disagrees with Jatoi. Jatoi's pleadings clearly reflect that his claims in this lawsuit arise out of the 1988-1991 events. All applicable statutes of limitation have run on these transactions and occurrences. Therefore, Guaranty Federal is entitled to judgment as a matter of law on Jatoi's claims, and summary judgment should be entered in favor of Guaranty Federal.

B. Res Judicata

Under Texas law, res judicata precludes a second action based upon claims actually litigated in a previous suit, as well as those claims that arise out of the same subject matter and could have been litigated.[1] *Getty Oil*

---

[1] Federal courts that are asked to apply res judicata principles to a state court judgment are required to apply that state's substantive law of res judicata. *Jones v. Sheehan Young &*

Co. v. Ins. Co. Of North America, 845 S.W.2d 794, 798 (Tex. 1992), *cert. denied, Youell & Cos. v. Getty Oil Co.*, 510 U.S. 820 (1993); *Barr v. Resolution Trust Co.*, 837 S.W.2d 627, 628 (Tex. 1992). Guaranty Federal argues that Jatoi's claims are barred by res judicata because they either were litigated or should have been litigated in the State Court Lawsuit.

Jatoi responds that under *United States v. Winstar Corp.*, 518 U.S. 839 (1996), he now has new causes of action that did not exist prior to that Supreme Court decision. Based upon its own reading of *Winstar*, the court disagrees with Jatoi. *Winstar* involved a breach of contract action brought by three financial institutions against the federal government in the aftermath of the savings and loan crisis of the 1980's. 518 U.S. at 858. The *Winstar* plaintiff's each acquired failed thrift institutions via "supervisory merger" contracts with the United States government. After the passage of Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA")'s the capital requirements for thrift institutions were tightened. The three plaintiff thrift institutions failed to meet the new capital requirements, and the thrifts were seized and liquidated by the government. After the seizure, the thrifts sued for breach of the merger contracts. The Court's opinion in *Winstar* addresses the impact of the new capital requirements introduced by FIRREA on the three thrift institutions who were plaintiffs in that case, in the context of the plaintiffs' breach of contract claims. *Id.* The court fails to see how the *Winstar*

Culp, P.C, 82 F.3d 1334, 1338 (5th Cir. 1996); *Production Supply Co. v. Fry Steel, Inc.*, 74 F.3d 76, 78 (5th Cir. 1996).

opinion creates any new right or cause of action for Jatoi, and Jatoi has not explained how *Winstar* supports his case.

A review of Jatoi's pleadings reveals that Jatoi's counterclaim in the State Court Litigation and the claims he is asserting in this case all arise out of the same events: the 1988 promissory note and the 1991 foreclosure on the note. Jatoi has already litigated these claims in the State Court Lawsuit. Therefore, res judicata applies to the instant claims, and Guaranty Federal is entitled to judgment as a matter of law on all of Jatoi's claims.

C. Compulsory Counterclaims

Guaranty Federal further argues that Jatoi's claims are barred by the compulsory counterclaim rule. Compulsory counterclaims must be plead [sic] where they arise out of the same transaction or occurrence that is the basis of the opposing party's claim and which do not require for adjudication the presence of third parties over whom the court is unable to acquire jurisdiction. *New York Life Inc. Co. v. Deshotel*, 142 F.3d 873, 881 (5th Cir. 1998). The Fifth Circuit relies on the "logical relationship" test to determine whether a counterclaim is compulsory, giving weight to the question whether the claim and counterclaim share an "aggregate of operative facts." *Id.* at 881-81, *quoting McDaniel v. Anheuser-Busch, Inc.*, 987 F.2d 298, 303-04 (5th Cir. 1993).

Jatoi responds to Guaranty Federal's argument regarding compulsory counterclaims by citing to *Winstar*, 518 U.S. 839, and stating that *Winstar* provides him with rights that he did not have at the time of the State Court

Litigation. As is discussed above, Jatoi has misinterpreted *Winstar* and has not otherwise convinced the court that his claims here would not have been compulsory counterclaims in the State Court Litigation. Guaranty Federal is entitled to judgment as a matter of law under the compulsory counterclaim rule.

D. Lack of Standing

Finally, guaranty Federal has shown that Jatoi's counterclaims and potential counterclaims became part of the bankruptcy estate when the Second Bankruptcy was converted from a Chapter 11 to Chapter 7. The summary judgment evidence shows that these claims were assigned to Guaranty Federal by the bankruptcy trustee, and the bankruptcy court approved the transfer. Therefore, Guaranty Federal owns these claims, not Jatoi. Jatoi has failed to set forth any evidence disputing this fact. Thus, Jatoi lacks standing to pursue his claims here, and for this additional reason, Guaranty Federal is entitled to judgment as a matter of law.

IV. Jatoi's Motion for Partial Summary Judgment

Jatoi has cross-moved for summary judgment, asking the court to grant him the relief requested in his complaint. For the above-stated reasons, the court has determined that Guaranty Federal's motion for summary judgment should be granted. Granting Jatoi's motion for partial summary judgment would necessarily conflict with this determination. In light of the court's ruling on

Guaranty Federal's motion for summary judgment, Jatoi's motion for summary judgment should be denied.

V. Sanctions

Guaranty Federal asks the court to award it approximately $3,500 in attorneys' fees incurred in preparing and filing its summary judgment motion, because Jatoi's attempt to relitigate issues which were decided in previous litigation between the parties is frivolous. Fed. R. Civ. P. 11 authorizes the imposition of sanctions against a party or attorney who signs and files a paper containing claims, defenses, or other legal contentions that are not warranted by existing law or a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law. Fed. R. Civ. P. 11(b)(2) and (c).

While Jatoi may believe in good faith that he is bringing new causes of action rather than relitigating old, expired claims, based upon the court's reasoning above, the court finds that Jatoi's conduct in filing this case is dangerously close to being frivolous and sanctionable. The court declines to award sanctions at this time; however, the court will accept no further filings from Jatoi in this case, including motions for rehearing or reconsideration. The filing by Jatoi of any such motion or other papers with this court will result in the imposition of sanctions. The court further cautions Jatoi that it considers as frivolous any appeal of this case to the United States Court of Appeals for the Fifth Circuit.

VI. Conclusion

For the reason previously stated, there is no genuine issue of material fact with respect to any claims asserted by Jatoi. Guaranty Federal is entitled to summary judgment on Jatoi's claims in their entirety. Accordingly, Guaranty Federal's Motion for Summary Judgment is **granted**, and all claims asserted by Jatoi are dismissed with prejudice. Guaranty Federal's request for sanctions is **denied**. Jatoi's Motion for Partial Summary Judgment is **denied**, and all other pending motions in this case are **denied as moot**. Judgment will be entered by separate document.

SO ORDERED this 31st day of March, 1999.

/s/ Sam A. Lindsay
Sam A. Lindsay
United States District Judge

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ALIMADAD JATOI, Plaintiff,	§	Civil Action No. 3:97-CV-3095-L
V.	§	
GUARANTY FEDERAL BANK, F.S.B., Defendant.	§	

JUDGMENT

(Filed March 31, 1999)

This judgment is entered pursuant to the court's memorandum opinion and order of March 31, 1999. It is therefore ORDERED, ADJUDGED, and DECREED that Plaintiff take nothing by his suit against Defendant, that this action is hereby dismissed with prejudice, and that all costs are taxed against Plaintiff.

SO ORDERED and signed this 31st day of March, 1999.

/s/ Sam A. Lindsay
Sam A. Lindsay
United States
District Judge

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ALIMADAD JATOI, Plaintiff,	§	
V.	§	Civil Action No. 3:97-CV-3095-L
GUARANTY FEDERAL BANK, F.S.B., Defendant.	§	

ORDER

(Filed April 27, 1999)

Before the court is Plaintiff's Motion for Rehearing filed April 15, 1999. Plaintiff's motion is hereby **denied.**

SO ORDERED.

Signed this 27th day of April, 1999.

/s/ Sam A. Lindsay
Sam A. Lindsay
United States
District Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-10729

ALIMADAD JATOI

Plaintiff - Appellant

v.

GUARANTY FEDERAL BANK FSB

Defendant - Appellee

Appeals from the United States District Court for the Northern District of Texas, Dallas

---

ON PETITION FOR REHEARING EN BANC

(Filed June 30, 2000)

(Opinion 5/19/00, 5 Cir., ___, ___ F.3d ___)

Before HIGGINBOTHAM, DeMOSS, and STEWART, Circuit Judges.

PER CURIAM:

(✓) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

( ) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. The court having been polled at

the request of one of the members of the court and a majority of the judges who are in regular active service not having voted in favor (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

PEH

United States Circuit Judge

REHG-6a

Final Draft
4/20/88

John D. Penn
HAYNES AND BOONE
1300 First RepublicBank Tower
801 Cherry Street
Fort Worth, Texas 76102
(817) 878-0600

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE ALIMADAD JATOI DEBTOR	IN PROCEEDINGS UNDER CHAPTER 11 CASE NO. 487-42139-11
GUARANTY FEDERAL SAVINGS & LOAN ASSOCIATION PLAINTIFF VS. ALIMADAD JATOI, DEBTOR/DEFENDANT	ADVERSARY NO. 487-4383 AND A CONTESTED MATTER

COMPROMISE AND SETTLEMENT AGREEMENT

* * *

2. *TERMS OF PAYMENT OF CLAIM.* JATOI shall pay GUARANTY's Secured Claim, plus interest at the rate of nine percent (9.0%) per annum, based on a 359

month amortization of the Secured Claim. The initial payment in the amount of FORTY-ONE THOUSAND ONE HUNDRED FOUR AND 100 DOLLARS ($41,104.59) shall be due on April 1, 1988, with the remaining payments of the Secured Claim at the stated interest rate amortized over 359 months. Thereafter, payments shall be due commencing May 1, 1988, in the amount of FORTY-SIX THOUSAND TWO HUNDRED FIFTY-SEVEN AND 79/100 DOLLARS ($46,257.79), and shall continue regularly thereafter, being due on the 1st day of each successive calendar month through and including March 1, 1991. Payments shall be due on the 1st of each month, but not delinquent until after the 10th day of each calendar month; provided, however, until this Agreement is approved by the Bankruptcy Court, JATOI shall pay all sums provided in this paragraph into an escrow account established at GUARANTY. GUARANTY shall not be entitled to apply the payments to its Secured Claim until ten (10) days after the entry of the order approving this Agreement. Payment by JATOI into the escrow account in accordance with the terms of this paragraph shall be deemed performance of the payment obligation until approval of this Agreement by the court.

* * *

5. *FORECLOSURE PROCEEDINGS.* In the event JATOI has not paid GUARANTY's secured claim in full on or before March 1, 1991, GUARANTY shall be allowed to foreclose upon its liens and secured interest in or after April 1991.

* * *

8. *DOCUMENTATION OF SECURED CLAIM.*

(c) The form of document promulgated by the State Bar of Texas in its Real Estate Forms Manual shall, with proper modifications consistent with this agreement of the parties, be used as reasonable guidelines in the preparation of documents necessary to evidence and secure the documents necessary to evidence and secure the obligations recited herein.

* * *

18. The parties hereto agree to use their best efforts to obtain the approval of this Compromise and Settlement Agreement by the Bankruptcy court, and agree to support the same at any hearing proposed thereon, and GUARANTY shall not oppose a plan of reorganization which complies with and incorporates the terms of this Agreement. The Order approving this Compromise and Settlement Agreement shall be free-standing, and neither the Order, nor this Agreement, may be modified by any subsequent Order or Plan of Reorganization or modification of any Plan of Reorganization, in this case or any subsequent case involving this Debtor and shall be binding upon any Trustee appointed in this case or any subsequent case involving this Debtor. In approving this Agreement, the Court specifically finds that this Agreement and its Order approving same may not be modified in any way except upon written agreement between JATOI and GUARANTY.

19. All notices required to be serviced pursuant to this Compromise and Settlement Agreement shall be served upon the parties at the addresses shown below unless a notice of change of address is served upon the parties at the addresses shown below:

Dr. Alimadad Jatoi
2315 Oak Knoll Drive
Colleyville, Texas 76034

DEBTOR

Mr. St. Clair Newbern, III
1701 River Run Road, #1000
Fort Worth, Texas 76107

Mr. William C. Meier
Central Park Tower
2350 Airport Freeway, Suite 660
Bedford, Texas 76022

ATTORNEYS FOR ALIMADAD JATOI

GUARANTY FEDERAL SAVINGS &
LOAN ASSOCIATION
Attn: Donald L. Wagstaff, Senior Vice President
14180 Dallas Parkway, Suite 400
Dallas, Texas 75240

Mr. John D. Penn
HAYNES AND BOONE
1300 First RepublicBank Tower
801 Cherry Street
Fort Worth, Texas 76102

ATTORNEYS FOR GUARANTY FEDERAL
SAVINGS & LOAN ASSOCIATION

* * *